

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT HARDEN,

Defendant-Appellant.

UNPUBLISHED

April 26, 2005

No. 241671

Wayne Circuit Court

LC No. 01-009927-01

Before: Judges Neff, P.J., and White and Talbot, JJ.

PER CURIAM.

Defendant appeals by right his bench trial convictions for false pretenses (greater than \$1,000 but less than \$20,000), MCL 750.218(4)(a), and four counts of using a false statement of identity to procure a financial transaction device, MCL 750.157v. Defendant was sentenced to two years of probation and to pay restitution. We affirm in part, reverse in part, and remand to the trial court for further action consistent with this opinion.

Defendant first argues that there was insufficient evidence to support his conviction for false pretenses because the prosecution did not present a victim who had detrimentally relied on defendant's false representations. We disagree.

A criminal defendant need not take any special steps to preserve a claim that the evidence was insufficient to sustain his conviction. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). This Court reviews a challenge to the sufficiency of the evidence in a bench trial de novo and in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000).

"The crime of larceny by false pretenses requires (1) a false representation as to an existing fact, (2) knowledge by the defendant of the falsity of the representation, (3) use of the false representation with an intent to deceive, and (4) detrimental reliance by the victim on the false representation." *People v Webbs*, 263 Mich App 531, 532 n 1; 689 NW2d 163 (2004) (citation omitted). Defendant's knowledge of the false representation and intent to defraud can be inferred from the entire evidence. *People v Reigle*, 223 Mich App 34, 39; 566 NW2d 21 (1997).

Sam Shehadah, the sales manager at Euro Motors, testified that he helped defendant fill out the Citizens Bank loan application and that defendant did this using the name “Robert Omar Parks.” Shehadah further testified that Euro Motors received the proceeds of this loan as payment for the Mercedes that defendant took possession of under the name Robert Parks. Gerald Naples, a fraud investigator for Citizens Bank, testified that the name signed on the borrower line of the loan contract was Robert Parks, and the total amount of the loan paid to Euro Motors was \$19,312. Officer Fred Davis, the officer in charge of the case against defendant, obtained copies of two driver’s licenses from the Secretary of State office with defendant’s picture on both of them, but the name Robert Eugene Harden was on one, and the name Robert Omar Parks was on the other. Viewed in a light most favorable to the prosecution, this evidence is sufficient to conclude beyond a reasonable doubt that (1) defendant falsely represented that he was Robert Omar Parks, (2) he knew that he was not Robert Omar Parks, (3) he intended to deceive Citizens Bank into believing that he was Robert Omar Parks, and (4) Citizens Bank detrimentally relied on defendant’s misrepresentation that he was Robert Omar Parks in paying Euro Motors \$19,312 for defendant’s Mercedes.

Defendant’s apparent argument that Citizens Bank is not a “person” as defined by MCL 750.218(4)(a) is without merit. The general provisions of the penal code define the word “person” to include “public and private corporations, copartnerships, and unincorporated or voluntary associations,” “unless a contrary intention appears.” MCL 750.10. The language of MCL 750.218 conveys no contrary intention. Moreover, corporations have been found liable for criminal offenses. *People v Hock Shop, Inc*, 261 Mich App 521, 525; 681 NW2d 669 (2004). There is no reason why a corporation cannot also be the victim of a crime. Defendant, therefore, cannot escape liability simply because his victim was a corporation.

If, however, defendant is arguing that Citizens Bank never suffered a loss as a result of defendant’s misrepresentation because he intended to pay off the loan, this argument is still without merit. The crime of false pretenses is committed when one is defrauded into paying money to a person whom he has not agreed to pay. *People v Lintz*, 251 Mich 367, 369; 232 NW 404 (1930). The steps of the crime of false pretenses are not fragmented, and the crime is complete when the money is obtained. *People v Robinson*, 23 Mich App 672, 676; 179 NW2d 239 (1970). Therefore, defendant’s alleged intention to pay back the loan is irrelevant. The crime was complete when defendant obtained payment for the Mercedes by intentionally misrepresenting his identity to Citizens Bank.

Next, defendant argues that there was insufficient evidence presented to support his convictions for using a false statement of identity to procure a financial transaction device. We agree.

The crime of using a false statement of identity to procure a financial transaction device occurs when a person (1) knowingly and (2) with intent to defraud, (3) makes or causes to be made, directly or indirectly, a false statement *in writing* regarding his or her identity or that of any other person (4) for the purpose of procuring the issuance of a financial transaction device. MCL 750.157v. A “financial transaction device” includes any electronic fund transfer card, credit card, debit card, point-of-sale card, or any other card used for “obtaining money, . . . goods, services, or any other thing of value.” MCL 750.157m(f). Defendant’s knowledge and intent can be inferred from the entire evidence. *Reigle, supra* at 39.

In support of her argument that there was sufficient evidence to convict defendant of violation of MCL 750.157v, the prosecutor points out the following facts. Defendant was arrested with two credit cards, an ATM card, and a Gateway charge card in his possession, all of which are financial transaction devices and were in the name of “Robert Parks.” Defendant also had a driver’s license and a state identification card with the name “Robert Parks” on them. When Sergeant Davis initially pulled defendant over and asked for his driver’s license, Davis saw another driver’s license in defendant’s wallet that was in the name “Robert Omar Parks.” Davis asked defendant about the other driver’s license, to which defendant told him it was his other driver’s license, saying, “you know how it is when you have bad credit.” Officers also found a book on the back seat of defendant’s car that explained how to get credit by using fraudulent Social Security numbers. Finally, defendant, in his statement to police, admitted to filling out applications for the three credit cards found in his possession using the name “Robert Parks.”

The prosecution is required to show every necessary element of the crime before a confession can be used. *People v Cotton*, 191 Mich App 377, 386; 478 NW2d 681 (1992). Possession of credit cards in someone else’s name is not an element of the charged offense. Rather, MCL 750.157v is violated when a person presents a written, false statement of identity for the purpose of fraudulently obtaining a credit card, not when the card is actually obtained. Although the evidence may be sufficient to infer defendant’s intent to defraud, there is no evidence in the record, other than defendant’s statement, that defendant made, or caused to be made, a false statement in writing regarding his identity to procure the issuance of the credit cards. The prosecution did not produce any witnesses to testify that a written application in the name of Robert Parks was ever submitted to any of the credit card companies for which defendant had cards, thereby failing to corroborate defendant’s statement. Defendant’s statement, therefore, cannot be used to establish the element of a false written statement of identity. *Cotton, supra* at 386. Viewing the evidence in a light most favorable to the prosecution, the trial court could not have found that the essential elements of the crime were proven beyond a reasonable doubt. The trial court, therefore, erred in finding defendant guilty of violating MCL 750.157v,¹ and defendant’s convictions for these charges must be reversed.

¹ The trial court’s findings of fact regarding the charges of using a false statement of identity to procure a financial transaction device are as follows:

As to Counts 2 through 5, the specific – the testimony for the individual credit card companies, whether it be Bally’s or – there’s Standard Federal, Parks’ name, that’s a Cross-Country Visa, Gateway and Bally’s. That’s probably one more card than they actually allege. There’s only four counts, 2, 3, 4 and 5; could be as to any one of these credit cards.

At a minimum, there’s an admission by the defendant in his statement that he obtained false – that he used false statement of his identity, that being Robert Parks, to obtain Visa Cross-Country and American Express, Standard Federal, Gateway cards upon which there were balances due and owing at the time. Those

(continued...)

This Court's finding that there was insufficient evidence presented to convict defendant of violating MCL 750.157v is dispositive on these charges. It is, therefore, unnecessary to address defendant's claim that the trial court erroneously relied on facts outside the record in finding him guilty of violating MCL 750.157v.

Lastly, defendant argues that his trial counsel was ineffective for failing to move to suppress the evidence recovered from his arrest as the fruits of an illegal stop, failing to move to suppress defendant's statement to the police as involuntarily made, and failing to object to the portions of defendant's statement that related to using a false statement of identity to procure a financial transaction device. All of this evidence related solely to the charges of using a false statement of identity to procure a financial transaction device. Evidence sufficient to convict defendant of false pretenses was established through Shehadah's and Naples' testimony, independent of the fruits of the traffic stop or defendant's statement to the police. Because there was insufficient evidence presented to convict defendant of violating MCL 750.157v, defendant's convictions must be reversed on that basis. We, therefore, find it unnecessary to address defendant's claims of ineffective assistance of counsel.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Michael J. Talbot

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were credit card type devices. The Bally's is a fitness program. I can understand why that perhaps was not charged.

But as it relates to the Visa Cross-Country, Am-Ex, Standard Federal and Gateway cards which were found on the defendant at the time of his arrest and to which the defendant admitted in his statement that he obtained through false statement of identity, the court finds defendant guilty of Counts 2 through 5.

Noticeably absent from these findings is any independent evidence of a *written* statement of identity used to procure the financial transaction devices. Because no evidence of this element of MCL 750.157v was ever produced, other than defendant's statement, there was insufficient evidence to convict defendant of using a false statement of identity to procure a financial transaction device.